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No. 08-1401

Supreme Court, U.S.
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In the Supreme Court of the United States

LINDA METRISH, WARDEN,
Petitioner,

v

DANIEL NEWMAN,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITIONER'S REPLY BRIEF

Michael A. Cox
Attorney General

B. Eric Restuccia
Solicitor General
Counsel of Record
P. O. Box 30212
Lansing, Michigan 48909
(517) 373-1124

Joel D. McGormley
Assistant Attorney General
Attorneys for Petitioner

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PETITIONER'S REPLY BRIEF

The Brief in Opposition confirms the jurisprudential significance of this case. It acknowledges that the Sixth Circuit created a framework of analysis that disregards the double deference in habeas cases due to State-court determinations that there is sufficient evidence to support a State conviction. This new analytical structure has significant consequences for the State of Michigan and its sister States endeavoring to sustain their presumptively valid convictions – especially ones proven by circumstantial evidence.

The importance of this case cannot be masked by Respondent's assertions to the contrary. Respondent mischaracterizes the State's arguments by claiming that the "parties are in complete agreement that the Sixth Circuit fully and accurately explained the standard of review governing insufficiency of the evidence claims in habeas corpus cases." Brief in Opposition, p 4.

Quite to the contrary, the Sixth Circuit created a novel analytical framework – not based in this Court's precedent – whereby it examines the evidence de novo to determine whether it allows for an inference of guilt beyond a reasonable doubt or merely a "reasonable speculation" of guilt. Where the habeas court finds only the latter to be the case it concludes ipso facto that the State court acted unreasonably. The effect of this standard is to allow the Sixth Circuit to engage in a de novo review and sit as the thirteenth juror. In doing so, the Sixth Circuit undermines this Court's analysis in *Jackson*[1] and nullifies the two levels of deference accorded the State-court rulings under *Jackson* and 28 U.S.C. § 2254(d).

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[1] *Jackson v. Virginia*, 443 U.S. 307 (1979).

Moreover, contrary to Respondent's claim that this case is "entirely fact-bound" and would not "affect anybody besides the parties," this case implicates the States' ability to enforce jury convictions in criminal cases that are based on circumstantial evidence. These broad-scale implications regarding what evidence will sustain a State-court conviction is demonstrated by the fact that this Court recently granted a writ of certiorari in *McDaniel v. Brown* (No. 08-559), involving the Ninth Circuit's analysis of a sufficiency of evidence claim.

1. **The Sixth Circuit created a new analytical framework, requiring a court on habeas review to determine de novo whether the evidence only allows for "reasonable speculation," thereby circumventing the deference accorded the State-court rulings under both *Jackson* and 28 U.S.C. § 2254(d).**

Respondent candidly agrees that "*Jackson*, viewed through the lens of the AEDPA governs this case...." Brief in Opposition, p 5. However, Respondent then incorrectly characterizes Petitioner's arguments as merely "a request to re-examine the lengthy record in this case and overrule the Sixth Circuit's reading of the facts." Brief in Opposition, p 5. Rather, Petitioner's argument is a call to fidelity to the limited review of habeas and the double deference required by AEDPA and *Jackson* – the Sixth Circuit should not have been conducting a de novo "reading of the facts" at all. Under the proper measure of deference under 28 U.S.C. § 2254(d), a habeas court examining sufficiency of the evidence claim should not be engaging in a de novo review – and the Sixth Circuit engaged in just such a review here.

The State court decision must be upheld, unless it is an *unreasonable* application of *Jackson's* rule.[2] In *Jackson*, this Court held that in reviewing a sufficiency-of-the-evidence claim, the relevant question is whether – after reviewing all of the evidence in the light most favorable to the prosecution – any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.[3] In engaging in the limited review, *Jackson* recognizes that the trier of fact has the responsibility "to draw reasonable inferences from basic facts to ultimate facts."[4] Because *Jackson* is a broad rule, the State courts should be given leeway in its application.[5]

AEDPA is layered over *Jackson*. A perceived erroneous State court decision is not an unreasonable one under § 2254(d). It is both possible and consistent with § 2254(d) to determine whether habeas relief is barred because the State court decision was not objectively unreasonable before deciding whether the underlying constitutional right was violated. On habeas, the review therefore should be limited to whether the State court understood the *Jackson* standard and whether the evidence cited as the basis for its decision was supported by the record. This is an analytical premise often ignored by courts on habeas review.[6] The Sixth Circuit further

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[2] 28 U.S.C. § 2254(d)(1); *Williams v. Taylor*, 529 U.S. 362, 404-405 (2000).

[3] *Jackson v. Virginia*, 443 U.S. 307 (1979).

[4] *Jackson*, 443 U.S. at 319.

[5] *Knowles v. Mirzayance*, 556 U.S. ___ (2009).

[6] Respondent's citation to *Piakowski v. Bett*, 256 F.3d 687 (7th Cir. 2001), only confirms this point. In *Piakowski*, a circumstantial evidence case, the Seventh Circuit appears to engage in the same failure to recognize the required level of double deference; however, there, the Seventh Circuit pointed prominently to a specific statement by the Wisconsin Court of Appeals it concluded had no support in the record. *Piakowski*, 256 F.3d at 693-694.

expanded this misapplication by clearly engaging in de novo review by applying its peculiar analytical framework.

Here, the Sixth Circuit utilized a "reasonable speculation" framework that has not been established by this Court. Respondent's gloss on this standard is to essentially claim that a jury engaging in reasonable speculation is coterminous to a jury not drawing reasonable inferences. However, this rule is nowhere to be found in this Court's precedent. This Sixth Circuit framework also defeats the proper standards in *Jackson* and § 2254(d).

By examining the evidence to determine whether it allowed for an inference of guilt beyond a reasonable doubt or merely a "reasonable speculation" of guilt, the Sixth Circuit has advanced a framework that allows for a post-hoc atomization of the evidence. It encourages a habeas court to function as the thirteenth juror. On habeas review, a court should refrain from retrospectively opening the door into the jury room's deliberations and second-guessing it. The result of this after-the-fact questioning is that its de novo examination of the evidence is then readily used to challenge the reasonableness of the State court decision. Any meaningful limitation to habeas review is thereby abandoned.

The Sixth Circuit did not speak to the reasonableness of the State court decision. The Michigan Court of Appeals here clearly employed the correct rule, viewing the evidence in a light most favorable to the prosecution, and reasonably determined that a rational fact-finder could have found the elements proven beyond a reasonable doubt. Pet. App. 49a-50a. In response, the Sixth Circuit relied on different nomenclature – that jurors merely engaged in something called "reasonable speculation" in convicting Newman – which enabled it to

conduct a de novo review. In light of this improper expansion of its role on habeas review, this Court should grant the writ.

2. **The misapplication of *Jackson* and the failure to accord deference to State court decisions has implications for all cases in habeas because it implicates the States' ability to enforce jury convictions in criminal cases that are based on circumstantial evidence.**

Under the Sixth Circuit's lack of deference and "reasonable speculation" standard, every State court sufficiency-of-the-evidence claim is subject to a de novo analysis. There is a danger in accepting Respondent's contention that this case is a fact-bound decision limited to the parties. The danger is that State court convictions can be second-guessed on habeas review under a de novo framework when the claim is insufficient evidence. The type of case mostly likely to fall to this misapplication is one proven by circumstantial evidence.

The reality is that it is the State court that is in the best position to conduct the sufficiency-of-the-evidence analysis under *Jackson*. The elements of the crime that are subject to the beyond-a-reasonable-doubt standard are for the State courts to define.[7] Likewise, the type of evidence that can be considered to support these elements is a matter of State law.[8] Moreover, State courts are asked to weigh the sufficiency of the evidence presented at trial on a daily basis. Therefore, notwithstanding the mandates of deference given the fact that this review requires an application of State law in several different

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[7] *Fiore v. White*, 528 U.S. 23, 29-30 (1999); *Garner v. Louisiana*, 368 U.S. 157, 166 (1961).

[8] *Bates v. McCaughtry*, 934 F.2d 99, 103 (7th Cir. 1991).

respects, a federal court on habeas review is not in as favorable a position as the State court. The case here is a paradigm of this fact.

Here, as detailed in the Petition, there was abundant evidence that linked Newman to the crime. It was uncontradicted that Newman owned one of the murder weapons (the 9-millimeter handgun). Pet. App. 12a. Five months before the murder, Newman purchased a 9-millimeter handgun. Tr. 2/25/93, pp 167-180. The firearms expert testified that this 9-millimeter handgun conclusively matched a spent cartridge recovered from the scene and at least one of the bullets recovered from Chappelear's body. Tr. 2/25/93, pp 5-41, 44-79; Pet. App. 12a. One witness saw a similar handgun in Newman's laundry hamper just a week or two before the murder. Tr. 3/3/93, pp 67-69; Pet. App. 12a-13a.

There was also evidence that linked Newman to an abandoned gym bag that contained the tools of the murder and that was found by hunters the day after the murder. The bag contained not only Newman's 9-millimeter handgun, but also a 12-guage sawed-off shotgun with tape on it, a ski mask, a blue jean jacket, gloves, and a set of walkie-takies. Pet. App. 13a. Evidence showed that Chappelear was shot not just with Newman's handgun, but also with a 12-guage shotgun, and the gym bag contained a 12-guage sawed-off shotgun. The murderer had cut the shotgun's wooden stock and iron barrel and had wrapped the handle with duct tape. When the police investigated Newman's home several weeks after the murder, they discovered duct tape similar to the tape wrapped around the shotgun's handle, a hacksaw with wood in the blade's teeth, and a pile of wood and iron shavings on a workbench in his garage. Tr. 3/2/93, pp 27-28, 106-110; Pet. App. 13a-14a.

Also discovered from Newman's home was twine visually and microscopically matching twine that was attached to the gym bag. Tr. 3/2/93, pp 21-22, 79-87; Pet. App. 13a.

Hair found on the ski mask was similar in all measurable characteristics to Newman's hair and the hair of one of Newman's dogs. The police laboratory scientist testified that his identifications regarding these hair samples were the strongest conclusions, as far as identification, that he could make within his field of expertise. Tr. 3/2/93, pp 186-218; Pet. App.13a-14a.

Debris found on the blue jean jacket in the gym bag visually and chemically matched a drywall compound recovered from the car Newman (who was a drywaller) was using on the day police arrested him. Tr. 3/2/93, pp 88-105, 156-157; Tr. 3/3/93, pp 23-24; Pet. App. 13a-14a.

There was evidence that Newman knew Chappelear and had visited his home at least once in the months before the murder. Pet. App. 13a.

Also, one witness explained that Newman told her that he wanted to rob some drug dealers, told her that he "wanted guns, drugs, money, anything that he could use," and implored her, on a daily basis, for names and addresses of potential targets. Tr. 3/3/93, pp 70-75; Pet. App. 13a-14a. There was evidence that Newman frequently used marijuana, knew that Chappelear was a drug dealer, and had purchased drugs from him before. Tr. 3/3/93, pp 6-16, 25-27, 70; Pet. App. 14a. The hiding place where Chappelear stored marijuana (his freezer) had been left open for some time when his body was found. Tr. 2/24/93, pp 45-46, 57, 63, 78; Pet. App.14a.

There was also testimony that Chappelear had made a pass at Newman's girlfriend in Newman's presence sometime before the murder and further that Newman was jealous and possessive. Tr. 3/3/93, pp 25-30, 70.

Newman claimed he had spent the night of the murder at the bar where his girlfriend worked. The testimony of the defense witnesses, however, was vague and of little value, with one witness not recalling which day of the weekend Newman was purportedly at the bar and another admitting that she did not have any idea if he was there on February 27 or 28, 1992, or whether he was there on any particular given weekend. Tr. 3/4/93, pp 62-63, 88-89. However, several prosecution witnesses who were present at the bar that night testified that although they could not recall whether Newman was present that night they did recall that Newman's girlfriend repeatedly asked them to tell police and Newman's attorney that Newman was there. Tr. 3/4/93, 133-139, 151-157, 184-188, 192; Pet. App. 14a. This evidence was suggestive that Newman's girlfriend was attempting to establish a false alibi.

In the face of this evidence, Newman was convicted by a jury of first-degree murder and possession of a firearm during the commission of a felony and sentenced to life in prison, plus two years for the felony firearm conviction.[9] The Michigan Court of Appeals, without dissent, rejected his insufficient evidence claims. Pet. App. 48a-50a. The Michigan Supreme Court denied Newman's application for leave to appeal. Pet. App. 46a.

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[9] The trial court subsequently vacated Newman's first-degree murder conviction due to an inadvertent procedural error, entered a conviction for second-degree murder, and resentenced Newman to a term of 40-80 years' imprisonment.

In light of this powerful circumstantial evidence, the Sixth Circuit devised its new rule of "reasonable speculation" to engage in and veil its de novo review of the evidence. Once it conducted a de novo review of the evidence and disagreed with the State's sufficiency analysis, it was inevitable that the Sixth Circuit would conclude that the State court decision was an unreasonable application of *Jackson*. Under the Sixth Circuit's lack of deference, a case built on circumstantial evidence is then subject to the Sixth Circuit panel sitting as a thirteenth juror. The State is effectively required to retry the case on appeal.

This Court should grant the writ to halt the usurping of the authority of the State courts and the whittling away of the State courts' ability to prove a case and sustain a conviction.

CONCLUSION

The State of Michigan respectfully requests that this Honorable Court grant the writ of certiorari.

Respectfully submitted

Michael A. Cox
Attorney General

B. Eric Restuccia
Solicitor General
Counsel of Record
P. O. Box 30212
Lansing, Michigan 48909
Telephone: (517) 373-1124

Joel D. McGormley
Assistant Attorney General
Attorneys for Petitioners

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